

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CIRIACO PUCILLO,)	
)	
Plaintiff,)	
)	
v.)	Case No. 03-CV-12359 MLW
)	
METSO PAPER, INC. AND)	
VALMET CONVERTING, INC.)	
Defendants.)	
)	

MOTION TO MODIFY SCHEDULING ORDER
TO PERMIT FILING OF DISPOSITIVE MOTIONS

Defendants Metso Paper, Inc. and Valmet Converting, Inc., by counsel, respectfully move the Court to modify the Scheduling Order governing this action to permit them to file dispositive motions in the form of motions for summary judgment. Defendants submit that the filing of such motions at this time, with fact discovery concluded and expert discovery not yet commenced, is appropriate in an effort to preserve judicial resources and to save the parties the significant expenses that would be associated with an expert witness phase of this product liability action.

In support of the motion, Defendants invite the Court's attention to the memorandum filed herewith and incorporated herein by reference.

Date: August 5, 2005

Respectfully submitted,

/s/ David L. Kelleher
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Metso Paper, Inc. and
Valmet Converting, Inc.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CIRIACO PUCILLO,

Plaintiff,

v.

**METSO PAPER, INC. AND
VALMET CONVERTING, INC.**

Defendants.

Case No. 03-CV-12359 MLW

**MEMORANDUM IN SUPPORT OF
MOTION TO MODIFY SCHEDULING ORDER
TO PERMIT FILING OF DISPOSITIVE MOTIONS**

Defendants Metso Paper, Inc. and Valmet Converting, Inc. respectfully submit that it is appropriate at this stage of the case, with fact discovery complete and expert discovery not yet begun, to grant leave to file dispositive motions in the form of motions for summary judgment. The Scheduling Order does not permit the filing of such motions without leave of the Court.

DISCUSSION

On August 11, 2004, the Court issued a Scheduling Order for this action. The Scheduling Order bifurcates discovery, providing for an initial period “limited to the issue(s) of non-expert discovery . . .” to “be complete by April 20, 2005,” Scheduling Order ¶ 7, followed by a second period of discovery that has not yet been scheduled relating to opinion witnesses.

In the period between the close of fact discovery and the commencement of expert discovery, the Scheduling Order provides for a second Scheduling Conference. The conference was initially scheduled for May 12, 2005. On May 11, 2005, the Court postponed the conference. It was rescheduled for August 4, 2005, and once again postponed. At this time, the conference has not been rescheduled. Thus, no activity is scheduled in this case as fact discovery

has concluded and expert discovery cannot commence. Accordingly, this is an appropriate time to permit the filing of motions for summary judgment.

Summary judgment motions at this time will further the purpose of the Federal Rules as set forth in Fed. R. Civ. P. 1 – *i.e.*, “to secure the just, speedy and inexpensive determination of every action.” Fed. R. Civ. P. 1. Summary judgment focuses on the factual record, specifically “the pleadings, depositions, answers to interrogatories, and admissions on file. . . .” Fed. R. Civ. P. 56(c). If the factual record shows that there is no genuine issue as to any material fact, then the moving party is entitled to judgment. Here, the factual record is complete. Future expert or opinion discovery will not alter the factual record.

Defendants respectfully submit that they should not have to bear the expense of expert witness discovery on this record. Therefore, Defendants respectfully request that the Court grant Defendants leave to file motions for summary judgment.

Date: August 5, 2005

Respectfully submitted,

/s/ David L. Kelleher

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*Attorneys for Defendants
Metso Paper, Inc. and
Valmet Converting, Inc.*

CERTIFICATION

Pursuant to Local Rule 7, counsel for Defendants has sought to confer with counsel for Plaintiff on this motion. When on July 27, 2005, the Court scheduled a conference for August 4, 2005, the parties agreed to raise this issue at the conference. Upon the cancellation of the conference, counsel for Defendants renewed the request for consent to this motion. Agreement has not been reached.

/s/ David L. Kelleher

David L. Kelleher

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Defendants.)	
)	

ORDER

Upon consideration of the Defendants' Motion To Modify The Scheduling Order To Permit Filing of Dispositive Motions and the record of this case as a whole, it is this ____ day of _____, 2005, hereby

ORDERED that leave is granted to the Defendants to file motions for summary judgment at any time from and after this date. Such motions, if filed, shall be filed and briefed in the ordinary course as provide by the Rules of the Court.

U.S. District Judge

CERTIFICATE OF SERVICE

I, David L. Kelleher, hereby certify that on August 5, 2005, I caused a copy of the foregoing Motion to Modify Scheduling Order to Permit of Filing Dispositive Motions, Memorandum in Support thereof, Certification, and proposed Order to be filed and served by the Court's electronic filing system and an additional copy served by mailing, first class, postage prepaid, directed to:

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/s/ David L. Kelleher

David L. Kelleher